

§ 134.103 Rules applicable to time periods provided in this part.

(a) The day from which the time period is computed is excluded, but the last business day is counted, excluding Saturday, Sunday, or Federal holiday.

(b) At the Judge's initiative, or upon the motion of a party showing good cause, the Judge may modify any of the applicable time limits, other than those established by statute and those governing when a case may be commenced.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47246, July 18, 2002]

Subpart B—Rules of Practice for Most Cases**§ 134.201 Scope of the rules in this subpart B.**

(a) The rules in this subpart generally apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and NAICS code designations. Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively in subpart D of this part and part 142 of this chapter.

(b) In the case of a conflict between a particular rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998; 67 FR 47246, July 18, 2002]

§ 134.202 Commencement of cases.

(a) A party other than the SBA may commence a case by filing a written petition within the following time periods:

(1) Except as provided by paragraphs (a)(2) through (a)(5) of this section, no later than 45 days from the date of receipt of the SBA action or determination to which the petition relates;

(2) In proceedings for debt collection under part 140 of this chapter: no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset; in accordance with the time frames specified in § 140.11 of this chap-

ter with respect to administrative wage garnishment;

(3) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(4) For 8(a) program suspension proceedings, see § 124.305 of this chapter;

(5) For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(b) The SBA may commence a case by issuing to the respondent an appropriate written order to show cause and filing the order to show cause with OHA.

(c) Cases concerning Small Business Investment Company license suspensions and revocations and cease and desist orders must be commenced with an order to show cause containing a statement of the matters of fact and law asserted by the SBA, the legal authority and jurisdiction under which a hearing is to be held, a statement that a hearing will be held, and the time and place for the hearing.

[67 FR 47246, July 18, 2002, as amended at 70 FR 17587, Apr. 7, 2005]

§ 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) A copy of the SBA determination being appealed, if applicable, and date received;

(3) A clear and concise statement of the factual basis of the case;

(4) The relief being sought;

(5) The name, address, telephone number, facsimile number, and signature of the petitioner or its attorney;

(6) A certificate of service (see § 134.204(d)); and

(7) In a debt collection case, a statement showing when the petitioner received the SBA notice initiating the debt collection proceeding (see § 140.3 of this chapter).

(b) A petition also must contain additional information or documents as required by the applicable program regulations in this chapter or by other subparts of this part 134. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(c) A petition which does not contain all of the information required by paragraphs (a) and (b) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

[67 FR 47247, July 18, 2002]

§ 134.204 Filing and service requirements.

(a) *Methods of filing and service.* Pleadings or other submissions must be filed and served by mail, delivery, or facsimile. Mail includes first class (including certified and registered), express, and priority mail. For good cause, the Judge may order that filing or service be effected by one of these methods.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA.

(1) *OHA's address.* OHA accepts filings between the hours of 8:30 a.m. and 5 p.m. eastern time at the following address: Docketing Clerk, Office of Hearings and Appeals, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. OHA's telephone number is (202) 401-8203. The number for OHA's facsimile machine is (202) 205-7059.

(2) The date of filing for pleadings and other submissions filed by mail, delivery, or facsimile is the date the filing is received at OHA. Any filing received at OHA after 5:00 p.m. eastern time is considered filed as of the next day.

(3) *Exhibits.* An exhibit, whether an original or a copy, must be authenticated or identified to be what it purports to be.

(4) *Copies.* No extra copies of pleadings or other submissions need be filed. If a document is offered as an exhibit, a copy of the document will be accepted by the Judge unless—

(i) a genuine question is raised as to whether it is a true and accurate copy; or

(ii) it would be unfair, under the circumstances, to admit the copy instead of the original.

(c) *Service.* Service is the mailing, delivery, or facsimile to all other parties of a copy of each pleading or other submission filed with OHA.

(1) Complete copies of all pleadings and other submissions filed with OHA must be served upon all other parties or, if represented, their authorized representatives or their attorneys, at their record addresses.

(2) The date of service is as follows: for facsimile, the date the facsimile is sent; for personal delivery by the party, its employee, or its attorney, the date the document is given to the party served; for commercial delivery, the date the document is given to the delivery service; for mail, the date of mailing. The date of mailing is the date of a U.S. Postal Service postmark or any other proof of mailing. If there is insufficient proof of mailing, there is a rebuttable presumption that the mailing was made five days before receipt.

(3) If the SBA is a party, the SBA must be served, as required by the applicable program regulations or by other subparts of this part 134. If the SBA office for service is not specified elsewhere, serve: Office of General Counsel, Small Business Administration, 409 Third Street, S.W., Washington, DC 20416. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at www.sba.gov/library/soproom.html.

(d) *Certificate of service.* A certificate of service shows how, when, and to whom service was made. Every pleading and other submission filed with OHA and served on the other parties must include a certificate of service. The certificate should state: "I certify that on [date], I caused the foregoing document to be served by [either "placing a copy in the mail," "sending a copy by facsimile," "personally delivering a copy," or "giving a copy to a delivery service,"] upon the following: [list name, address, telephone number, and facsimile number of each party served]." The certificate must be signed and include the typed name and title of the individual serving the pleading or other submission.

(e) *Confidential information.* Any information in pleadings or other submissions that is believed by the submitting party to constitute proprietary or confidential information need not be